UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re:	*	
	*	Chapter 7
	*	
THE MORTGAGE SPECIALISTS, INC	*	
	*	Case No. 19-10889-MAF
	*	
Debtor.	*	
	*	

OBJECTION TO MOTION TO CONDUCT 2004 EXAM OF MICHAEL GILL, JR.

NOW COMES, Michael Gill, Jr., a non party to this case, by and through his Attorneys, Law Office of Dennis C. Hogan and states as follows:

BACKGROUND

1. Michael Gill Jr., born May 30, 1988, is the son of the Debtor's principle Michael Gill, Sr. As a child, Michael Jr,. worked around his father's business by helping clean and maintain the property. According to New Hampshire Secretary of State records, Michael Sr. created the Debtor on January 4, 1999. At age sixteen, Michael Jr. progressed to doing marketing calls. After high school Michael, Jr. went to the University of New Hampshire and received a degree in business management. Upon his graduation Michael Jr. returned to the business and started once again making marketing calls. Michael Jr. eventually worked his way up to being a mortgage broker and branch manager.

2. During the entire controversy of Michael Senior displaying accusations of drug dealing corruption by the Petitioning Creditors on the exterior electric billboard there where about two dozen employees of the Debtor. These employees went to the Debtors locations each day to work their jobs and had no involvement in the offending accusations. Michael Gill, Jr. was one of those approximately two dozen employees of the Debtor. Those employees, including

Michael Jr., have the knowledge and talent to make a living in the mortgage brokerage business whether or not the Debtor exists.

3. Michael Jr. wanted to separate himself from the distractions from the mortgage business that had been started during the Debtors run. Michael Jr. wanted to grow a business of his own and leave the Debtors history behind. Therefore, starting in April of 2017 Michael Jr. set about making Nextgen Mortgage Inc. (herein after referred to as Nextgen.) a viable company in the mortgage brokerage business. Starting the first of this year Michael Jr. and some former employees of the Debtor began working for Nextgen. Michael Jr. was in the process of getting Nextgen up and running before the auctions of the Debtor's real estate and these bankruptcy proceedings.

4. Nextgen is completely separate from the Debtor. They have separate business books and records. Nextgen's funding for software and the first few months wage costs were funded with a loan from Michael Jr.'s personal savings. To save money the software which Nextgen purchased is less expensive than that used by the Debtor. The computer hardware is ten years old and must be replaced because they can only run antiquated versions of Windows. Nextgen employed the same website creator and saved money by agreeing to content and a structure that the website company had already created.

5. The Debtors business books and records were stored in offices at the Debtors three locations. Nextgen employees do not touch the Debtors books and records and have no use for them. Nextgen runs a paperless operation.

7. Nextgen began writing mortgage applications and employing staff at the beginning of 2019. [redacted]

[redacted] During the time Nextgen has been at the Debtor's property it has paid for utilities, landscaping, plowing and other maintenance in Nashua and Plaistow. Nextgen has a lease for office space in a new location beginning October 1, 2019. In anticipation of the move, Nextgen has purchased its own office furniture.

ARGUMENT

8. The Trustee does not have good cause to examine Michael Gill, Jr. because Michael Jr. is no longer employed by the Debtor and has no information beyond what the Trustee can acquire from the documents trustee intends to request. The documents are stored at the Debtors locations. Since Michael Jr. is no longer an employee of the Debtor he is not authorized to control the documents. Therefore, any additional questions would be outside the scoop of what may be asked in a 2004 Exam.

9. With the demise of the Debtor some employees left for other companies to continue their careers'. Michael Gill Jr. created Nextgen Mortgage Inc. (Nextgen). and serves as President to employ himself and the remaining former employees of the Debtor.

10. Nextgen Mortgage, Inc has no relationship to the Debtor. No officer is shared by either company, the software of the companies is different, the two companies have different websites, and calls to Nextgen are answered by the employees by identifying it as "Nextgen Mortgage." [redacted] The only reason Michael Jr.'s email at the debtor company is on the New Hampshire Secretary of State website is that it was not taken down when Michael Jr departed and he has no control now that he has departed.

11. It means nothing that both companies use some of the same venders. There are, of course, relationships that both companies share with web builders, mortgage underwriters, and individuals.Those relationships make Nextgen no more connected to the Debtor than any other companies in the same industry.

12. [redacted]

13. Michael Gill, Jr. has not been employed by the Debtors since before the commencement of this bankruptcy proceeding.

14. Nextgen has been planning a physical move since before the start of these bankruptcy proceedings. Nextgen is in the process of moving to Trafalgar Square in Nashua to begin its lease which starts October 1, 2019.

15. Since Michael Gill, Jr. is not in any way an agent of the Debtor. Michael Gill, Jr. is not authorized to physically provide the documents the Trustee intends to request.

16. Some of the intended requests by the Trustee are for confidential information which may require authorization by the New Hampshire Banking Department before they are released.

17. Once Nextgen has moved to Trafalagar Square the Petitioning Creditors will be the only ones with physical access to the requested documents.The Trustee can retrieve those documents through coordination with the Petitioning Creditors who own the real property that was once the debtors.

18. The Trustee can learn nothing from Michael Gill, Jr. that is not in the documents the Trustee intends to request. Now that the location of the documents to be requested is on the record there is no reason for a 2004 Exam.

19. The Motion to Conduct a 2004 Exam itself is based on erroneous assertions that Michael Jr. and Nextgen are in possession of Debtor's books and records, assets, and that Nextgen could be the successor or one in the same as the Debtor.

20. Rule 2004 (b) states that the 2004 Exam "may relate only to the acts, conduct, or property or the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate." Any information Michael Jr. has regarding the Debtor is in the documents. The location of the documents has been identified herein. Therefore all the information has been disclosed and there are no acts, conduct, properties, liabilities, financial conditions or matters that affect the administration of the estate to which Michael Jr. can provide further information. Therefore, there is no reason for the 2004 Exam unless questions are raise outside what the rule allows.

WHEREFORE, Michael Gill, Junior respectfully requests that this Court:

A. Deny the Motion to Conduct 2004 Exam of Michael Gill, Jr.,
B. Deny the request that Michael Gill Jr. produce, to the Trustee's counsel, the Documents,
C. Grant such further relief as the Court deems just.

MICHAEL J. GILL JUNIOR

By his Attorneys,

Dated: September 23, 2019

LAW OFFICE OF DENNIS C. HOGAN PLLC

By: /s/ Dennis C. Hogan

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CERTIFICATE OF SERVICE

I hereby certify under the pains and penalties of perjury that I have served a copy of the foregoing Objection to Motion and the related motion upon the following persons at the addresses indicated by electronic filing or First Class Mail, Postage Prepaid, this 20th day of January 2020.

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